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THE TRANSPORTATION OF ENGLISH CONVICTS AFTER 1783

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From the very beginnings of English colonization, statesmen, reformers and business men sought to utilize the new lands both as a means of solving troublesome social problems and at the same time of adding to the material welfare of the motherland and establishing its power abroad. Sometimes "the shoveling out" of English paupers and vagrants to relieve the congested labor market, thus avoiding the payment of heavy poor rates was sought;² at others a means of disposing of troublesome religious sectarians who would not conform to the rules and discipline of the established church.³ Political offenders and prisoners of war from Civil War days until the nineteenth century, were removed from harms way and the state saved from heavy expense by banishment to distant English colonies where their labor would be appreciated.⁴ The government furthermore sought to relieve itself of the burden and responsibility of either imprisoning or executing numerous offenders against the severe civil law of the day.

As early as 1617 an order of the Privy Council was issued stating that—

Whereas it hath pleased his Majestie out of his singular Clemencie and mercy to take into his princely Consideration the wretched estate of divers of his Subjects who by the Lawes of the Realme are adjudged to dye for sondry offences though heynous in themselves, yet not of the highest nature, soe as his Majestie both out of his gracious Clemencye, as also for diverse weighty Considerations Could wishe they might be rather Corrected than destroyed, and that in theire punishmentes some of them might live, and yealde a profitable Service to the Common wealth in partes abroad, where it shall bee founde fitt to employ them, for which

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²Report of the Select Committee on Emigration in 1826 (London, 1827), passim; J. E. Gillespie, *The Influence of Oversea Expansion on England to 1700*, pp. 22-25 (Columbia University Studies in History, Economics and Public Law, No. 207, New York, 1920).

³Acts of the Privy Council: Colonial Series, vol. i, pp. 393, 394, 402; James D. Butler, *British Convicts Shipped to the American Colonies*, in the *American Historical Review*, October, 1896, p. 5.

⁴Butler, *op. cit.*, passim; Gillespie, *op. cit.*, pp. 18-19; J. C. Ballagh, *White Servitude in the Colony of Virginia*, passim (John Hopkins University Studies in Historical and Political Science, Baltimore, 1895).

purpose his Majestie having directed his Commission under the greate some of the prominent reformers of the day, was finally welcomed as a means of relieving the government from a most perplexing burden Seale of England, to vs and the rest of his privy Counsell, gyving full power warrant and Authoritye to us or and Sixe or more of vs whereof the Lord Chancellor or Lord Keeper of the Greate Seale, to be two, to Reprieve and stay from execution suche persons as now stand Convicted of any Robbery or felony (Willfull murther, Rape, witchcraft or Burglary onely excepted) who for strength of bodye or other abilityes shall be thought fitt to be employed in forreine discoveryes or other Services beyond the seas. . . .⁵

Thus from its very origin, transportation was conceived not only as a means of reform and punishment, but even more as an opportunity for profitably employing and thereby saving much waste and expense caused the state by its offenders. The criminal who "for strength of bodye or other ability shall be thought fitt" for service was the person whose life should be saved and devoted to yielding "a profitable service to the commonwealth." However, it was much used by judges as a means of mitigating the severity of the law. Throughout the seventeenth century many convicts were sent to the colonies,⁶ and by the time of the American Revolution, England was annually transporting 2,000 of them to America.⁷ Thus, when this convenient manner of disposing of criminals was stopped by the revolution, the government was suddenly confronted with a difficult problem. The prisons were filled to overflowing.⁸ Thousands of prisoners were crowded into unsanitary hulks ready for their journey to an unknown destination. Meanwhile, the government began an investigation of possible sites for convict settlements. As an experiment some hundreds of convicts were actually landed in western Africa, where, as Burke remarked, "all life dies, and all death lives"; under these circumstances the gallows "would rid them of their lives in a far less dreadful manner than the climate or the savages of Africa."⁹ Just at this juncture

⁵*Acts of P. C., Col. Series*, vol. i, p. 10.

⁶Butler, *op. cit.*, passim; Gillespie, *op. cit.*, p. 21; Ballagh, *op. cit.*, passim.

⁷André Brésillion, *De La Transportation*, Thèse pour le Doctorate, Université de Paris (Paris, 1899), p. 11.

⁸Edmond Burke in a speech to parliament in 1785 gives 100,000 as the number at that time awaiting transportation. This must be an exaggeration, but is an evidence of the congested condition. William Cobbett, *Parliamentary History of England*, vol. xxv, p. 391.

⁹Cobbett, *op. cit.*, vol. xxv, pp. 392, 431. An offer was made to the Russian Government to send the convicts to Crimea. Brésillion, *op. cit.*, p. 11. As late as 1789 attempts were made to land eighty Irish convicts in Newfoundland. Ernest Scott, *A Short History of Australia* (Oxford University Press, London, New York, 1918), pp. 39, 43.

a plan was proposed to the government to form a settlement for loyalists and convicts in New South Wales, a country recently explored by Captain Cook. After due consideration, this plan, though opposed by and at the same time as an opportunity for advancing British empire and commerce, and the king announced in his speech to Parliament January 23, 1787, its adoption so far as the convicts were concerned.¹⁰

Thus was inaugurated in a somewhat hasty manner, a system totally different from any hitherto tried. Previously convicts had been sent to serve as bond servants to colonial planters. Masters of merchant vessels had assumed the responsibility for the transport and disposal of the convicts as bond servants to the planters in a colony where such servants formed the unimportant minority of the whole colonial population. Under the system used in Australia, the majority of the colonists were to be convicts, and they were directly controlled by the government which founded the colony for their disposal.¹¹

The judges were empowered to impose sentences of transportation for terms of seven or fourteen years or for life. In war time many convicts were allowed to enlist in the army or navy. As late as 1837, it was officially stated that transportation might be inflicted as punishment for over two hundred offenses. While many were serious, others would appear today as remarkably slight to call forth such a penalty. Thus, "slaughtering butcher's meat without a license, damaging trees and saplings to an extent exceeding £5, stealing oysters from an oyster-bed, defacing marks on government property, poaching, or being upon any land armed by night for the taking or destroying game were offenses subject to transportation." Dueling and abduction were also sometimes thus punished.¹²

From the very start, through general lack of experience, indifference and faulty management, the government made a system which was destined to cause evil rather than good, produce much needless suffering. The first fleet bearing convicts to the newly projected settlement sailed on May 13, 1787, under the command of Arthur Phillip, the first governor. It was composed of the *Sirius*, the *Supply*, three store ships and six transports carrying 500 male and 250 female convicts, and 290 officers, marines and extra hands.¹³ In spite of Phillip's

¹⁰Cobbett, *op. cit.*, vol. xxvi, p. 211.

¹¹Marion Phillips, *A Colonial Autocracy, New South Wales under Governor Macquarie* (University of London Studies in Economics and Political Science, London, 1909), pp. 1, 2.

¹²Scott, *op. cit.*, p. 53.

¹³*Ibid.*, p. 44; Phillips, *op. cit.*, p. 3.

protests, little care was taken to furnish proper variation in the diet of salt meat provided for the long sea voyage, thus sending them to the extremity of the globe "as they would be sent to America—a six weeks' passage." In this manner, great danger of a heavy death rate from scurvy was run. Fortunately, due to Phillip's care, only thirty-two died on this first voyage, but later voyages took extremely heavy toll.¹⁴

Hired transports were employed to convey the convicts from England to New South Wales. Contractors received between £20 and £30 per head. The more convicts carried the greater the profit would be, thus as many were usually crammed on board as the ships would hold. As a result of such a state of confinement the most loathsome disease was common and the death rate was extremely high. Out of 502 who were placed on the Neptune in 1790 for conveyance to Australia, 158, and in 1799, 95 out of the 300 on boards the Hillsborough died on the voyage. Those who did arrive were so near dead that they could not stand, and it was necessary to sling them like goods and hoist them out of the ships, and when first landed they died at the rate of ten or twelve a day. The government attempted in 1802 to correct these evils by sending convicts twice a year in ships specially fitted out for the purpose, and placed under the direction of a transport board and commanded by naval officers.¹⁵ Although the transports continued to be crowded,¹⁶ health conditions apparently were greatly improved as it was reported in 1819 by Sir T. B. Martin, the head of the transport board that within the past three years only 53 out of 6,409, or at the rate of 1 in 112 had died. Out of the 10 transports which had recently sailed only one or two had died.¹⁷

Further evidence of the lack of careful planning and of the evils which were soon to be manifest in the system were apparent upon the arrival of the first settlement in Australia. No superintendent, no schoolmaster, overseers, agriculturists or mechanics had been provided to teach and discipline the convicts. Coercion, it was true, was provided for by the muskets of the marines, but even these through

¹⁴Louis Becke and Walter Jeffrey, *Admiral Phillip* (Builders of Greater Britain Series, London, 1899), pp. 26, 44.

¹⁵*Ibid.*, p. 44; Scott, *op. cit.*, p. 54.

¹⁶In that year Mr. Bennet, a member of parliament, had investigated a transport and found the space allotted to a convict was one foot one inch by six feet; while each negro on the African slave ships was allowed one foot six inches by six feet. T. C. Hansard, *The Parliamentary Debates, First Series*, vol. xxxix, p. 89.

¹⁷*Ibid.*, vol. xxxix, pp. 116, 117.

governmental oversight were sadly in need of ammunition.¹⁸ The success of the settlement in getting started was left to the chance that there might be trained mechanics and agriculturists among the convicts. Such as were skilled were frequently placed in important positions, irrespective of their criminal record, while those of little use were turned into drudges. Thus, only one skilled bricklayer could be discovered among the convicts in the first expedition. He was at once given charge of a construction gang.¹⁹

From 1819, assignment to free settlers became the principal element of punishment which consisted of compulsory labor enforced by the government or by the private individuals to whom the convicts were assigned. The convicts upon their arrival were divided into four classes, namely: farmers, manual laborers, gentlemen convicts and women. The laborers were usually required to do forced labor for the state such as road building and repairing, the draining of marshes, etc. The gentlemen convicts who generally had no trade, were kept directly under the government's charge and employed as secretaries and other servants. Agricultural and many of the manual laborers were granted to individuals for farm work, or as shepherds and domestic servants. Some highly prized convicts who possessed mechanical skill might be employed in various trades by their masters.²⁰

Even after his allotment to a free settler, the convict was rationed by the government for eighteen months. He was given some return for his services in the form of such additions to his regular diet as tea, sugar and tobacco. After a reasonable time of good conduct, convicts might receive tickets of leave which exempted them conditionally from punishment. In case of bad conduct during the term of conditional freedom, they were again submitted to forced labor. A ticket-of-leave man, or emancipist as he came to be called, instead of serving another could pursue any industry for his own profit. Thus, there came to be emancipist clergymen, merchants, bank directors, attorneys, surgeons and schoolmasters.²¹ Before the system of selling land was introduced in 1831, emancipists could easily obtain grants of

¹⁸The marines through governmental oversight were only supplied with ammunition enough for immediate service while in port in England. Becke and Jeffery, *op. cit.*, p. 44.

¹⁹Samuel Sidney, *Through Colonies of Australia* (Auburn, 1854), pp. 32, 33, 36.

²⁰Hansard, *op. cit.*, *Third Series*, vol. liii, pp. 1238, 1239; Brèsillion, *op. cit.*, pp. 23, 24.

²¹Brèsillion, p. 25; Scott, pp. 55, 56, 57.

land. According to Phillip's instructions they were if single to receive grants of thirty acres, if married, fifty acres, with ten more for each child. These grants were to be free from all taxes for ten years, afterwards a quit-rent of sixpence for every thirty acres was to be charged. The government went even farther and promised to provide the ex-convict and his family with rations for twelve months, and the necessary tools and seed and to sell him stock on easy terms.²²

During the first thirty years, tickets-of-leave were granted without any regular system, at the discretion of the governor. Indeed, with the exception of political prisoners about whom special instructions had been issued, it was not difficult to obtain emancipation. Useful service was encouraged by this means. For instance, nine convicts were given to Captain Flinders for a voyage of exploration, and were promised absolute or conditional pardons according to his recommendation. Good conduct of those employed on government work, was often rewarded by release from hard labor. Governor Brisbane who became governor in 1821, established a regular scale for emancipation. By this a convict sentenced to seven years' transportation could obtain his ticket after four years of good conduct; a convict sentenced to fourteen years might secure one after six years; and one sentenced to transportation for life could secure this conditional freedom after eight years.²³

Transportation as a means of disposing of England's criminal population has to be considered from a number of different angles. How far did it relieve the mother country of its burden and through the dread it inspired act as a deterrent to the commission of new crime? What were its effects towards reforming the criminal if any? What was its influence upon colonial society? Was it a proper and wise policy for the home government to seek to advance the nation's commerce and add to British domains by founding a convict settlement?

That large numbers of convicts were sent during the latter eighteenth and nineteenth century is clearly in evidence. Between 1787 and 1857 no less than 108,715 were transported to the Australian colonies.²⁴ Some idea of the relative distribution of these may be

²²Phillips, *op. cit.*, pp. 11, 12.

²³Scott, pp. 57, 58.

²⁴L. O. Pike, *A History of Crime in England* (London, 1876), vol. ii, p. 456. This figure may be too small as Lord Molesworth states that up to 1836, 98,000 had been transported. Hansard, *Third Series*, vol. liii, p. 1267.

gained from Sir William Molesworth's speech to the House of Commons on May 5, 1840. Here it is stated that up to that time 75,200 criminals had been sent to New South Wales, while to Tasmania 27,759, since 1817, and that at Norfolk Island there were then 1,200, and in Bermuda 900.²⁵

If considered merely from the financial standpoint, transportation was much less expensive than the creation of new penitentiaries and the care for the prisoners there, but it proved much more costly than the further use of the hulks and houses of correction. It saved the immediate cost of building penitentiaries which in 1840 was estimated at £2,000,000.²⁶ Due to the costs of transportation to a distant part of the world, and the heavy expense of maintaining garrisons, and for the upkeep of justice, jails and police, which in such a criminal community proved nine times as great in proportion to the population as similar service in England, the expenditure for the punishment of transportation proved very great; so great in fact that since the criminal, as will be seen later, was neither reformed, nor crime prevented by this means, it was not justified unless the convict's value towards founding a new colony and increasing British commerce is considered. Molesworth estimates the cost of the punishment of a transported convict under the assignment system at £71. The expense of maintenance at the hulks was about half that amount; while in a house of correction it would come to £55 or £56. If kept in a penitentiary in solitary confinement, the charge rose to £96. However, a system of transportation in which assignment was abolished would reach the cost of £145.²⁷

As a means of preventing new crime from occurring in the motherland and through fear of its infliction as a penalty, transportation proved a dismal failure. In fact, it was reported to have frequently had the opposite effect from that which it was intended. It was imagined when transportation to Australia was first employed that the terrors of the long sea voyage into little known regions, the hard life to be undergone in a new land, the forced labor, and the probability that the offender would never see his native land and his relatives again, would make the sentence next to death the most severe penalty

²⁵Hansdard, *Third Series*, vol. liii, p. 1238. The figures given for Norfolk Island probably represent criminals who had committed offenses in New South Wales and were sentenced to the severer discipline at Norfolk Island, as well as those coming directly from England.

²⁶*Ibid.*, vol. liii, p. 1291.

²⁷*Ibid.*, vol. liii, pp. 1268, 1269.

which could be inflicted. It was not long, however, before the part of the penalty which meant banishment and separation from friends lost much of its penal terror. In time, transportation came to mean that instead of going to an unknown and strange land, convicts were sent to countries inhabited by thousands of their companions in guilt and the very place to which voluntary emigrants were hastening, as to a land of promise. It sometimes was the case that at the very time a judge was expatiating on the miseries of exile, and perhaps in the same place, some emigration agent would be magnifying the advantages of the new country, lauding the fertility of its soil, and the beauties of its climate, telling of the high wages to be obtained, the enormous fortunes that have been made; and offering to eager and willing listeners, as a boon and especial favor, the means of conveyance to that very place to which the convict in the dock had been sentenced by the judge for his crimes.

This was especially the case when towards the middle of the century more free emigrants were going to Australia than convicts.²⁸ Under these circumstances it would be hard to show that the habitual criminal would be so attached to his native land as to dread to leave it for one represented to be more fertile, mild and cheerful, where the same language was spoken, and where other members of his profession would be met with. All that the criminal would apprehend, from a punishment so conceived, would be the penal labor and privations, but even these were the merest chance ranging from that of "a servant subject to trifling restraint, and of a slave enduring long and tedious misery," everything depended upon the taskmaster to whom assignment was made. Much more suffering occurred in the penal colonies than was credited by the people of criminal tendencies at home, but due to the remoteness of the place of punishment, it was impossible to make those at home understand the convict's actual condition. The profession of the criminal is one in which constant chances are taken, so a further one would generally be ventured without much forethought as to the consequences.²⁹

The accounts which criminals sent home, were generally from those who had been "fortunate in this lottery of punishment," and thus, were much too favorable. Those who might have told a different story if they wrote at all, seldom told of their sufferings.³⁰

²⁸*Ibid.*, vol. liii, p. 1248.

²⁹*Ibid.*, vol. liii, p. 1249.

³⁰It was said that these thus sought to bring laws into discredit, and thus to revenge themselves, or else strove to have companions in misery.

Even if offenders in England had been better acquainted with the nature of transportation, still all they would learn, would be that it was a most unequal and uncertain punishment, a "mere lottery," in which there were many "prizes and many blanks."³¹

Indeed, from almost its inception, the system was supposed by offenders and others in the homeland to possess many prizes. There were, to be sure, not a few emancipated convicts who did succeed in becoming wealthy men. Several are recorded whose income reached £3,000 a year and another who drew £40,000.³² Richard Whately, Archbishop of Dublin, relates in a speech before the House of Lords, how his attention was called to this subject from his observation of the effects of the transportation system in his own neighborhood in Suffolk. He tells that he found the relatives and former neighbors of transported convicts receiving such favorable accounts of the situation of those convicts—sometimes true, and sometimes false, but always alluring—that the punishment of transportation had the effect of a bounty on crime, and the condition of the convict with light work and not only plentiful but luxurious maintenance, could not but be regarded with envy by the poor laborer, who with hard work and scanty food, was struggling, and often struggling in vain, to keep himself and his family from the parish.

This led, in a number of instances, to crimes committed with the sole object of securing transportation. An instance is cited of a letter from Australia, read among the agricultural laborers of Bedfordshire which made them "anxious to know what they would commit to entitle them to be transported."³³

The hope which was given the convict that at the expiration of his sentence, if not before, he would be located on a farm, and "placed in a situation exceeding the brightest dreams of an English cottager" would do much towards taking away the dread of transportation as a punishment.³⁴

Another defect which must not be forgotten, is that the punishment lost much of its effect even if it had proved severe, for the con-

³¹Hansard, vol. liii, pp. 1249, 1250.

³²Scott, p. 57.

³³Richard Whately, *Lectures in Political Economy, with Remarks on Tithes, Poor-Laws and Penal Colonies* (London, 1855), pp. 236, 315, 316.

³⁴*Ibid.*, p. 238.

vict at that distance would almost as soon be forgotten as if sentence had been carried out upon an individual in past ages.³⁵

Transportation no more succeeded as a reformatory agency, than it did in preventing the commission of crime. From the commencement of the convict's journey to Australia, he was subject to evil influences. Youthful criminals and those whose crime was slight were thrown into close association with the most vicious and hardened characters. To prevent mutiny on shipboard, guards were placed on the deck and at the gangway, but this was all the control or regulation to which convicts were subject. The mental horror of such a journey, where two or three hundred beings were stowed in the hold of a transport for four months, with nothing to do but to strive to eliminate all reflection can be imagined. The whole voyage was passed in gambling, in singing indecent songs, and in every species of vice.³⁶ A school was thus provided, by criminals of the greatest experience. A man was valued according to the amount and adroitness of his villainies. Almost all their conversation was of the larcenous kind, "consisting of details of their various robberies, and the singular adventures they had passed through." A ship's officer tells of listening to one of these conversations, in which the narrator was recounting with great glee an adroitly managed robbery:

The admirable manner in which the whole was wound up called forth such a spontaneous burst of laughter and applause from the throng around, that he rapturously exclaimed, while striking the bench with his firmly-clenched fist (his whole countenance beaming delighted), "By G—, I could steal a shirt off a fellow's back without his knowing it."³⁷

Under these circumstances, it would require a powerful reformation to bring the convicts back to a state no worse than they were before the voyage.

Upon his arrival and assignment, the influences to which the convict was subjected depended much upon the temper and character of his master. The worst criminal might have the best master, and the most repentant might be driven to commit fresh offenses by the oppression of which he was the victim. Thus Sir Richard Burke, Governor of New South Wales, commenting on the system, declared:

³⁵*Transportation, First and Second Reports from the Commons' Select Committee, May 27 and June 20, 1856, p. 111.*

³⁶Hansard, vol. xxxix, p. 468.

³⁷Whately, *op. cit.*, pp. 239, 240.

It is one of the most apparent and necessary results of the system of assignment, to render the condition of the convict so placed, extremely unequal, depending, as it must, on a variety of circumstances over which the Government cannot possibly exercise control.

Governor Macquarie in this same connection remarks:

I have no doubt that many convicts who might have been rendered useful and good men, had they been treated with humane and reasonable control, have sunk into despondence by the unfeeling treatment of such masters; and that many of those wretched men, driven to acts of violence by harsh usage, and who by a contrary treatment might have been reformed, have betaken themselves to the woods, where they can only subsist by plunder, and have terminated their lives on the gallows.³⁸

Thus the assignment system entrusted one of the most important and difficult functions of an executive government to the uncertain interests and capricious feelings of private and irresponsible individuals who had neither been selected because of their fitness for the difficult task assigned them, nor led to consider that they had any public duty to perform.³⁹ Each settler was made the keeper of a house of correction to punish and reform criminals, but he was not obliged to attend to these objects, except in so far as they might incidentally further his own interest. He did not regulate his treatment of convicts with a view to diminishing crime in the British Isles, but he was only concerned with the profits of his farm. Under such arrangements, there was great danger that both the master and servant would become hardened and brutalized. Even in the penitentiary system, where affairs were carefully regulated, there existed this danger, but how much more must the danger have been in such an irresponsible system of slavery as assignment proved to be!

The power of the master to cause punishment to be inflicted on his convict servants was very great, and he was constantly provoked by them to use it. Governor Arthur of Tasmania tells how the convicts' crimes and misconduct continually caused the settlers trouble, expense and disappointment. There was "so much peculation, so much insubordination, insolence, disobedience of lawful orders, and so much drunkenness that reference to the magisterial authority" was constant.⁴⁰ The punishments even for trifling offenses, in order to strike terror into the hearts of the convicts and prevent uprisings, were very

³⁸*Ibid.*, pp. 246, 316; Hansard, vol. liii, pp. 1239, 1240.

³⁹Hansard, vol. liii, p. 1241.

⁴⁰*Ibid.*, vol. liii, p. 1239.

severe. A convict might be punished for "drunkenness, disobedience to orders, neglect of work, absconding, abusive language to his master or overseer, or any other disorderly or dishonest conduct, by imprisonment, solitary confinement, labor in irons, or fifty lashes." How thoroughly this law was enforced may be judged by the fact that in 1835 the convict population of New South Wales did not exceed 23,000, while the convictions mainly for the offenses just mentioned amounted to 22,000, and the number of lashes inflicted exceeded 100,000.⁴¹ While the convict who was ill treated had the right to appeal to the court, the majority of the magistrates were usually owners of convict labor.⁴²

On the other hand, many masters fed their convict laborers much better than laborers in England were fed, and often connived at many vices and much laziness to keep them in as cheerful and contented a state as possible rather than to resort to coercion which might endanger their family and property, or make their servants "sulky, perverse and wilfully neglectful." The government of the colony, no less than the planters, was confronted with the problem of inflicting suitable punishment upon the convicts, and with making the colony prosper. Since slave labor was the least profitable of any, and involved more troublesome superintendence, some governors took the course of making the convicts as unlike slaves as possible. They therefore, through regulations and by placing the convicts with masters who would give them indulgent treatment, sought to put them in the comfortable situation which free laborers enjoy where labor is scarce and land abundant.⁴³ Governor Macquarie, although he did not favor or employ the assignment system, took the attitude that the convicts were sent to New South Wales to be supported at the least possible expense, and he came to the conclusion that the cheapest way of governing his criminal subjects was to make them wealthy and respectable, rather than slaves of the free settlers as his predecessors had conceived them. Accordingly, he rewarded a former convict, who had risen to importance in the country, with a judgeship, and often invited him and other emancipists to dine at Government House. This may, indeed, have inspired a desire for reform among the convict population in New South Wales, but the effect would hardly be conducive to the preven-

⁴¹This was said to be the favorite punishment with the masters, for it did not deprive them of the convict's services as would have happened if he was sent to the chain gang.

⁴²Hansard, vol. liii, pp. 1239, 1242.

⁴³Whately, p. 266.

tion of crime in England when it came to be known there. Thus the utmost inconsistency existed in the treatment of transported convicts.⁴⁴

Those convicts who were not assigned but kept directly under government employ were engaged in road construction, the marine and survey department, and in Tasmania were even appointed constables in the police force. These were the most undesirable of the convicts, and since they were kept closely together, and no attempt was made to classify or separate them, they became active centers of vice. Subject to very lax superintendence, they performed very little labor. It was found impossible to provide efficient superintendents. It was said that under Governor Phillip, convicts attempted to escape by every ship which left the harbor and were usually successful. Fifty were taken from a ship at one time.⁴⁵ A number of colonies of convicts were planted by those who succeeded in escaping in small craft to the South Sea Islands,⁴⁶ to distant points on the Australian coast, or to islands lying adjacent. Thus on Kangaroo Island there were forty such persons, and on Flinder's Island twenty, living mainly on wild animals and selling seal skins and oil to traders. Others escaped to the wilds of Australia and either perished or became bush rangers, committing many crimes on the isolated settlers.⁴⁷

The government, in its effort to preserve some degree of discipline among the convicts, attempted to terrify them into good behavior. Minor offenses were converted into crimes and severely punished. It was said that the convict code of the penal colonies had no equal in severity in the civilized world. Besides flogging and solitary confinement, the chain gangs were perhaps the punishment most to be dreaded. Convicts when punished in this manner were locked during the night in boxes which held from twenty to twenty-eight men; these could neither stand upright nor sit down at the same time unless their legs were at right angles with their bodies. In some instances, not more than eighteen inches in width were allowed for each individual to lie upon the bare boards. During the day they were kept at work under a strict military guard. Flagellation was administered upon the slightest provocation. At one time there were 1,700 prisoners in New South Wales and Tasmania undergoing punishment in the chain-gangs.⁴⁸

⁴⁴Sidney, *op. cit.*, pp. 59, 60.

⁴⁵*Ibid.*, p. 40; Hansard, vol. liii, p. 1241.

⁴⁶Many native chiefs on these islands had for prime minister some choice graduate of the "University of Newgate."

⁴⁷Whately, p. 247; Brèsillion, pp. 17, 26.

⁴⁸Hansard, vol. liii, pp. 1242, 1243.

The extremity in punishment was undergone in penal settlements established at Norfolk Island, a dependency of New South Wales, and at Port Arthur in Tasmania. About 1840, there were 2,000 convicts in these places, constituting with their guards and keepers the sole population. Here the work was the most incessant and galling that could be invented, and any misconduct was instantaneously punished by the lash. Under these circumstances, as Sir Francis Forbes, Chief Justice of Australia, asserts, suffering was carried to such an extent that death was desired, and many prisoners committed new crimes to get sent back to Sydney, tried and executed. Driven to such desperation, the convicts often attempted mutiny, and strong, armed forces had to be kept to prevent such occurrences from succeeding. A Catholic priest, Father Ullathorne, who visited Norfolk Island expresses his view of the matter as follows:

"A human being cannot be made unutterably wretched, without becoming in an equal degree depraved. The extremes of misery and of immorality are generally found existing together. In both respects Norfolk Island has not its parallel in the world, except perhaps at the kindred settlement of Port Arthur."

The Reverend R. Stiles, the resident chaplain, further states:

"That blasphemy, rage, mutual hatred, and the unrestrained indulgence of unnatural lust are the things with which a short residence in the prison wards of Norfolk Island must necessarily familiarize the convict."⁴⁹

That such suffering as the convicts experienced under the assignment system, the chain-gang and penal colonies in Norfolk Island and Tasmania did not deter them from the commission of new crimes, but had the very opposite effect, is evidenced both by statistics and by the statements of creditable witnesses. Even the terrors of Norfolk Island failed to prevent the commission of crimes, which caused convicts to be sent there a second and third time. It is stated that in Tasmania in 1834, out of a population of forty thousand, sixteen thousand of whom were convicts, and twenty-three thousand free, and one thousand soldiers, the summary convictions for the year amounted to about fifteen thousand, eleven thousand of which were those of convicts. Nearly the same proportion of convictions occurred in New South Wales. Thus on an average of the seven years from 1828 to 1835, about one in every hundred of the whole population was convicted, while in England the number stood at about one in a thousand. Still further,

⁴⁹*Ibid.*, pp. 1243, 1244, 1245.

murders, attempts to murder and crimes of similar gravity were as common as petty larcenies in England. Even among the free emigrants, the soundest part of the population, crime was nearly three times as great as in England.⁵⁰ Judge Burton describes the situation in New South Wales during the years when convicts were sent there as so bad that—

“It would appear to one who could look down upon that community, as if the main business of them all were the commission of crime and the punishment of it, as if the whole colony were in motion towards the several courts of justice; and the most painful recollection of all must be, that so many capital sentences and the execution of them had not had the effect of preventing crimes by the way of example.”

As Captain Maconchie aptly asserts:

“By transportation the prisoners are all made bad men instead of good, scarcely any are reformed, and human nature does not stand still, if not improved it gets worse.”⁵¹

After his release, the convict was generally required to settle in Australia. In fact, tickets of leave were often granted on condition that he should remain in the colony.⁵² Originally intended to free England from all contamination from released convicts, as well as to provide the new colony with a population, and to enable the ex-convict to find work where his labor was in demand instead of his being subject to unemployment conditions in England, this arrangement worked all too frequently to lead the convicts to downfall. Subjected from the moment he left England to those who were setting him the worst possible examples, he was released to a society three-fifths of whom in 1836 were criminals or ex-criminals and many of the remainder children of convicts. Thus, placed in a community whose moral tone was necessarily low, where the terror of disgrace was removed by the absence of reputable persons for whom he might feel respect, and surrounded with every variety of bad characters whose delinquency he knows, and who know his, he is encouraged and kept in countenance in everything which is evil.

Indeed, it would be difficult to conceive of desirable moral standards in a community to which at its foundation the government had

⁵⁰*Ibid.*, p. 1251.

⁵¹*Ibid.*, pp. 1250, 1251.

⁵²Those who did return to England were said to be hardened in every vice and prepared to do incalculable evil, Whatley, p. 265.

nearly forgotten to assign a chaplain, and which for many years could claim but one, and even when more were supplied, these were often found to be more interested in their duties as magistrates or in farming⁵³ than in the work of reform. Here for long there were "no schools except for the wealthy, and these chiefly taught by ex-convicts; slave masters who sold rum; slaves who drank it." Drunkenness was one of the greatest vices. The public houses increased to "an extent exceeding the proportion in the lowest and poorest haunts in Great Britain." As late as 1834, nearly a tenth of the free population of Tasmania were annually fined for drunkenness.⁵⁴ Here ex-convicts were not only occupied with commercial pursuits, but might be found serving as teachers, police, witnesses and members of the jury, and even on one occasion as magistrates.⁵⁵ As Whately aptly expressed it:

"Not only is every kind of profligate example to be found everywhere close at hand, but a debased and depraved public opinion is established. The current sets, as it were, against temperance—against purity of life—against integrity, and virtue in general."⁵⁶

In 1836, of the 100,000 convicts, not 13,000 were women. This great disproportion between the sexes led to distressing moral conditions. The government, although it fully came to recognize this evil, was helpless to correct it. It was extremely difficult to find a means of punishment for the female prisoners, whose conduct being so invariably bad settlers were usually unwilling to take them into their families, and those who were assigned were very frequently returned for discipline. Under these circumstances, the government resorted to marriages between the female convicts and the free and convict populations. This, however, did not seem a desirable punishment.⁵⁷

An angle of the question yet to be considered is, What was transportation worth to England as a means of founding her empire? A

⁵³The Bishop of Exeter, in a speech delivered in parliament in 1840, said that it was only through the interference of Wilberforce, Bishop Portens, and others that the government made any provision whatever for a chaplain to accompany the first expedition. He further states that in June, 1837, representations were made by the judges in the colony deploring the want of spiritual instruction, and that the government failed even to reply to them. Hansard, vol. liv, pp. 301, 302. Sidney, p. 75.

⁵⁴Sidney, pp. 74, 76; Whately, pp. 327, 343; Hansard, vol. liii, p. 1251.

⁵⁵Hansard, vol. liii, p. 1257; Sidney, p. 75.

⁵⁶Whately, p. 342.

⁵⁷Hansard, vol. liii, pp. 1255, 1256. In the towns the proportion was five men to two women and in the country seven to two. *Ibid.*, vol. liv, p. 310.

contemporary historian, Eden, considers that the government might have been blamed if it had sought to send industrious and respectable artisans to secure possession of a territory, however extensive, in such a little known and distant part of the world. For this criminals who had forfeited their lives or liberty might as well be used, since they "have become a forlorn hope, and have always been adjudged a fair subject of hazardous experiments." Even if death and permanent banishment from the motherland was the lot of the convict, he would need only to reflect that his crimes had drawn this punishment upon him.⁵⁸ It is probable that Pitt's government, if it had not been confronted with the problem of disposing of prisoners, would at this time not have been interested in forming a settlement in such a distant part of the world as Australia.

If no other element was available for starting and developing the colony, it must be acknowledged that the convict served a useful purpose. However, Lord Bacon's criticism, uttered so many years before, "that it was a shameful and unblessed thing to take the scum of people and wicked, condemned men to be the people with whom you plant, . . . for they will ever live like rogues and not fall to work, but be lazy and do mischief and spend victuals, and be quickly weary, . . ." proved only too true when it was applied to Australia. As colonists, convicts there, as elsewhere, generally proved undesirable. A further defect with this type of colonization was the fact that the convict population, and the low state of civilization, for long discouraged free settlers from coming in large numbers. When at last they composed a considerable part of the community, a government necessarily arbitrary for the control of a convict population remained, until transportation could be stopped, a check on the development of representative government.⁵⁹

Meanwhile the number of prisoners arriving constantly increased. Thus from 1818 to 1824, 2,500 were annually transported, while between 1825 and 1831 the number rose to 4,000 a year.⁶⁰ Under these circumstances, the difficulty of management increased, as land was no longer granted upon the expiration of sentence. Within England itself many reformers began to favor a penitentiary system accompanied by solitary confinement and hard labor. The first deadly blow was given

⁵⁸Phillips, *op. cit.*, p. 3.

⁵⁹Hansard, vol. liv, pp. 251, 252: Whately, p. 247.

⁶⁰Brèsillion, p. 27.

in 1838 to the system of transportation to the Australian colonies by a committee of the House of Commons, generally known as Sir William Molesworth's committee, which was extremely adverse to transportation. It recommended its discontinuance, both as a great injustice to the colonies, and also as a bad punishment, since it failed to deter criminals at home or reform them abroad.⁶¹ It recommended that transportation to New South Wales and the settled portions of Tasmania should be discontinued as soon as possible. As a result, in May, 1840, an Order in Council was passed ending the assignment system and revoking the order already in operation regarding the sending of convicts to Australia, but still permitting criminals to be sent to Tasmania and to Norfolk Island.⁶²

A change which should have been gradually introduced was effected in a hasty, ill-considered manner. Forced to action by public opinion after fifty years of neglect and indifference,⁶³ the assignment system had been suddenly abandoned without providing any substitute; transportation to New South Wales had been stopped while almost simultaneously the House of Commons, moved by congested jails, had called upon the Crown to immediately remove from England a very large number of convicts. To make matters still worse, the punishment in the hulks was prohibited, and the convicts were sent abroad. Except for a limited number employed at Bermuda, and a few in West Australia and Gibraltar, practically the whole tide of transported convicts was poured into Tasmania, to the number of 17,000. A country at best of limited possibilities was fairly inundated by the foul stream. The free inhabitants had understood that the government expected to limit the flow of convicts and had busied themselves inducing free settlers to come to their land. The policy pursued by the government had the effect of stopping the inflow of this free immigration and created a glut of convict labor which drove free workmen and laborers

⁶¹*Ibid.*, p. 26; *Transportation, First Report from the Commons' Select Committee*, p. 1.

⁶²Scott, p. 187; Sir William Molesworth was much opposed to sending convicts even to Norfolk Island, but on this point he was at variance with his committee, which thought they still might be sent to the unsettled parts of Tasmania and to Norfolk Island. Hansard, vol. liii, p. 1284.

⁶³Archbishop Whately complains that he had tried for eleven years to draw the attention of parliament to the evils of the system, but as it was not a political issue and involved many perplexing problems it was neglected. Lord Russel, when Sir William Molesworth spoke as chairman of the transportation committee, comments on the fact that the house was nearly empty. Hansard, vol. liv, p. 247; vol. liii, p. 1279.

out of the colony. "Whole districts became depopulated; streets of houses became vacant; tradespeople were ruined; industry was paralyzed." The convicts were domineering in their preponderance.⁶⁴ They even owned a newspaper whose owner wrote that it "would be a good thing to kick out of the colony the free settlers."

On the Australian mainland, difficulty was caused the land owners by the sudden stoppage of a cheap and plentiful labor supply. In western Australia the settlers were unanimous in desiring convict labor. In the northern part of New South Wales the stockmen were extremely anxious for renewal of transportation. Few funds for sending out free emigrants to Australia were available, and when they were sent there was no means of forcing them to go to the remote districts of the colony where the production of wool was chiefly carried on, and if they could be induced to go, they demanded high wages. Ticket-of-leave men could be made to go to the places where they were most desired. Under this economic stress, agitation was renewed by the stockmen for the resumption of transportation regardless of the evils which the system had caused.⁶⁵

Meanwhile, in England and Ireland, the jails and prisons became overcrowded. A magistrate in Yorkshire reported that the jails in that part of the country were "so choked and filled" that the magistrates were forced to refrain from committing persons to prison who deserved that punishment, and due to their overcrowded state the plans for the reformation of convicts could not be carried out. In Ireland, due largely to the vast amount of crime caused by famine conditions, the situation was still worse. In 1847, 12,883 persons were crowded into jails which had been built to hold no more than 5,655. Under these circumstances the death rate in these places of confinement was frightful. In 1835 it was only 81, while by 1847 it had risen to 1,315. It was impossible under existing conditions to keep the different classes of prisoners separate, and the sane and insane, the debtor and the convict under sentence of transportation were all huddled together. The government attempted to relieve the situation by sending large numbers to the convict stations at Gibraltar and Bermuda, and in 1848 not less than 859 were thus sent from Ireland alone. So many convicts were accumulated at Bermuda that they became un-

⁶⁴Hansard, vol. cxiv (Third Series), pp. 1086, 1087, 1088, 1090; *Transportation, First Report, op. cit.*, p. 1; Sidney, p. 119.

⁶⁵Hansard, vol. liii, pp. 1275, 1276; vol. cxiv, p. 1091; Scott, pp. 189, 190.

manageable. Earl Grey, the Colonial Secretary, aroused by the need of taking some action, immediately ordered, before obtaining the consent of the colonists, that 300 of the convicts at Bermuda should be removed to the Cape of Good Hope, thus constituting it a convict settlement. Such a protest was raised by the inhabitants that the convicts were not landed.⁶⁶

Not only was there difficulty in caring for the convicts still under sentence, but alarm soon began to be felt for the effect of releasing so many emancipated convicts in the motherland where their sentences were commuted or had expired. It was estimated that, due to the crowded state of the labor market, not one in twenty of the convicts released in England could find employment, and that they would at once frequent their old haunts and resume their criminal practices. It was pointed out that in France the convicts had been discharged upon expiration of their sentences at Toulon and Brest and allowed to return to their former homes. These men had failed to re-engage in honest industry due to labor conditions and to the prejudice which was held against them. They had been a source of disaffection and it was said had played a large rôle in the revolution of 1848 which had taken place in France. England, it was thought, had owed much of her security to the fact that released criminals were not let loose upon the mother country.⁶⁷

At the same time, it was now fully realized that it had been a mistake to send convicts to Australia to serve their sentences. It had been proved that it was impossible in so distant a colony to give gangs of undisciplined and unreformed convicts the vigilant superintendence they required. Officers in whom confidence could be placed could not there be obtained, and convicts had to be placed over convicts. The worst characters were crowded together on the voyage and upon their arrival.

The government, however, compelled by conditions in Tasmania and at home, and led by the demand for labor voiced by the Australian sheepmen, determined upon a compromise plan, proposed in 1847, whereby the convicts' sentence was divided into three parts. The first portion of a maximum term of eighteen months was to be passed in England in separate imprisonment, where they were to be subjected to moral influence and taught useful trades. The second stage was their

⁶⁶Hansard, vol. cii, pp. 393, 400, 413; vol. cviii, pp. 782, 783.

⁶⁷*Ibid.*, vol. ciii, pp. 392, 418.

employment on public works in England, Bermuda or Gibraltar. After a period varying with the length of sentence spent in this manner, the prison commissioners were to select such as seemed to have profited by the treatment and send them to Australia on tickets-of-leave with the chance, if it was recommended, of conditional pardon. In either case, they never could return to England. If a conditional pardon was granted the convict had a much larger amount of freedom than with an ordinary ticket-of-leave or under the assignment system. If another colony offered better working conditions he might go there; besides he was no longer required to report at stated intervals. The ticket-of-leave man, on the contrary, could not leave the colony to which he was sent, and must be prepared to show himself when called to do so. He was also expected before being granted a conditional pardon to repay some of the money spent on his transportation to the colony, and for the expense of sending his family to him. Those whose records were bad in the English period of their sentence were sent to Norfolk Island or parts of Tasmania and employed on public works.⁶⁸

Both Archbishop Whately and Sir William Molesworth, who had been careful students of the problem and leaders in the reform of the system, advocated a similar plan, but with the difference that the convict should be sent to parts of the empire where there were few criminals and a large free population. Thus both the evil of many released in England, where work would be hard to find, and that of increasing the criminal population in Australia, which was already too large for the welfare of the colony and for the proper environment for the released convicts themselves, would be avoided.⁶⁹

As it happened the government's plan was doomed to fresh failure. The recent discoveries of gold had brought in a large number of free laborers, who were employed in preference to the convicts. The latter found themselves without work, and soon crime began to increase in a disturbing manner. The conditional pardon system had resulted in flooding the colonies with shiploads of criminals, who in many cases had merely shammed reformation in order to secure freedom to carry on their criminal activities in a land where there were greater opportunities, and less police than in England. Highway robbery became a flourishing industry. In an attempt to correct this, Lord Grey, Secretary of State for the Colonies abandoned the issue of conditional pardons and sent the convicts with tickets-of-leave. Under this arrange-

⁶⁸*Ibid.*, vol. ciii, p. 406, 409, 411; Scott, p. 190; Brèsillion, p. 33.

⁶⁹Hasnard, vol. liii, p. 1272; Whately, p. 321.

ment the convict, instead of wandering at will, had to report himself to the police at stated times.⁷⁰

From the start the government plan had met with opposition from an influential part of the free Australians. A sharp division of opinion regarding the matter existed between the land-owning interests and the townspeople. At first the government ignored whatever protests were made, and between 1844 and 1849 sent as many as 1,727 convicts. Anti-transportation feeling kept increasing in Melbourne, Sydney and Tasmania. The "Sydney Herald" declared that the convict system involved "an abominable system of misrule and total depravity"; and that Australia could only hope to gain a standing among the British colonies by its abolition. Thus it had come to be realized that there was no hope for free governmental institutions or a moral and progressive society as long as this evil remained. An Anti-Transportation League was formed which carried on much successful agitation. In 1850 transportation to New South Wales and South Australia, in 1853 to Tasmania, and in 1855 to Norfolk Island was discontinued. Convicts still continued to be sent to Western Australia, where their labor was appreciated.⁷¹ It was planned to send as many as 1,500 a year. More were sent than the settlement could receive, and soon bands of them were fleeing towards the colonies to the east and south. It was affirmed in New South Wales and Victoria that crime had been increased and that investigation had shown that the offenders had come from the west. They demanded that transportation should be completely abolished. However, at this very time those convicts who had been freed in England from the prisons had increased crime there to such an extent that public opinion came to be strongly felt by the government. A commission appointed to study the question was affected more by the complaints of citizens in the homeland than those from the distant colony. It recommended that transportation should be continued for prisoners who had served sentence in England to little inhabited colonies, where they would not be exposed to temptation, and where work might be secured under more careful surveillance than would be the case in great cities.⁷²

While Western Australia still welcomed transportation, the other colonies were determined to prevent it. They even threatened to proclaim their independence. The government under these conditions

⁷⁰Scott, p. 192; Brèsillion, p. 33.

⁷¹Scott, pp. 192, 193, 194, 196.

⁷²Brèsillion, pp. 38, 39, 40.

reluctantly gave in, and in 1870 completely suppressed this means of punishment. To the very end, the government had stubbornly clung to the idea that the Australian colonies must serve the convenience of the motherland regardless of cost; thus it was stated in the House of Commons that "the country had a right to look to our colonies to receive our convicts without complaint."⁷³

⁷³*Ibid.*, p. 40; Scott, p. 195.